

JOHN MORELLI, P.C.  
203 West Somerdale Road  
Voorhees, NJ 08043  
(856) 616-1300  
Attorney for Defendant, BRIAN SUSCHKE

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Plaintiff(s)

TIMOTHY J. MILLER

v.

Defendant(s)

TRENTON POLICE, TAC TEAM MEMBERS  
RYAN WOODHEAD, PETER GREHAN, TARA  
STEFANO, JASON ASTERBURY, BRIAN  
SUSCHKE, NELSON CARTAGENA

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: UNITED STATES DISTRICT COURT  
: DISTRICT OF NEW JERSEY  
: TRENTON DIVISION

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: Case No.: 08-3092 (AET)

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: ***ANSWER & SEPARATE***  
: ***DEFENSES***  
: ***OF BRIAN SUSCHKE***

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Defendant, Brian Suschke, by way of Answer to the Complaint of the Plaintiff, says:

**PARTIES**

1. This Defendant neither admits nor denies the allegations of this paragraph but leaves the Plaintiff to his proofs.

4. The allegations of this paragraph are not directed against this Defendant and therefore no answer is required.

5. b.c.d. The allegations of this paragraph are not directed against this Defendant and therefore no answer is required.

5. e. The Defendant Brian Suschke specifically denies each and every allegation in the Plaintiff's complaint against him.

5. f.g. The allegations of this paragraph are not directed against this Defendant and therefore no answer is required.

6. The Defendant Brian Suschke specifically denies each and every allegation in the Plaintiff's complaint against him.

Wherefore, Defendant Brian Suschke demands that this Count be dismissed with prejudice, together with costs of suit and attorneys fees.

**SEPARATE DEFENSES**

1. This particular Defendant was not guilty of any negligence, which was a proximate or producing cause of any injury or damage alleged in the Complaint.

2. At the time and place alleged in this Complaint, this particular Defendant violated no legal duty then and there owing to the Plaintiff.

3. Any injury or damage alleged in the Complaint was caused solely by the negligence of the Plaintiff, whereby the Plaintiff is barred from recovery from this Defendant.

4. The negligence of the Plaintiff was greater than any negligence of this particular Defendant and, therefore, Plaintiff is not entitled to recover damages against this particular Defendant or, in the alternative, any damages awarded to the Plaintiff should be reduced in proportion to the percentage of negligence attributable to the Plaintiff.

5. Defendant assert that they are entitled to credit or set-off with respect to all collateral payments made to Plaintiffs, in accordance with N.J.S.A. 2A:15-97.

6. Defendant pleads the defense of N.J.S.A. 2A:15-5.2.

7. Defendant pleads the defense of N.J.S.A. 2A:15-5.2.
8. The claims of the Plaintiff are barred by N.J.S.A. 59:2-1.
9. Plaintiff's Complaint is barred by N.J.S.A. 59:2-2(b).
10. The claims of the Plaintiff are barred by N.J.S.A. 59:2-3.
11. Plaintiff's Complaint is barred by N.J.S.A. 59:2-4.
12. Plaintiff's Complaint is barred by N.J.S.A. 59:3-1(b).
13. Plaintiff's Complaint is barred by N.J.S.A. 59:3-2.
14. Plaintiff's Complaint is barred by N.J.S.A. 59:3-3.
15. Plaintiff's Complaint is barred by N.J.S.A. 59:3-4.
16. Plaintiff's Complaint is barred by N.J.S.A. 59:3-5.
17. Plaintiff's Complaint is barred by N.J.S.A. 59:3-8.
18. Plaintiff's Complaint is barred by N.J.S.A. 59:3-9.
19. Plaintiff's Complaint is barred by N.J.S.A. 59:5-1.
20. Plaintiff's Complaint is barred by N.J.S.A. 59:5-2.
21. Plaintiff's Complaint is barred by N.J.S.A. 59:5-4.
22. Plaintiff's Complaint is barred by N.J.S.A. 59:8-3.
23. Plaintiff's Complaint is barred by N.J.S.A. 59:8-5.
24. Plaintiff's Complaint is barred by N.J.S.A. 59:8-5.
25. Plaintiff's Complaint is barred by N.J.S.A. 59:8-6.
26. Plaintiff's Complaint is barred by N.J.S.A. 59:8-7.
27. Plaintiff's Complaint is barred by N.J.S.A. 59:8-8.
28. Plaintiff's Complaint is barred by N.J.S.A. 59:8-9.

29. Plaintiff's damages are limited by N.J.S.A. 59:9-2.
30. Plaintiff's damages are limited by N.J.S.A. 59:9-3.
31. Plaintiff's damages are limited by N.J.S.A. 59:9-3.1.
32. Plaintiff's damages are limited by N.J.S.A. 59:9-4.
33. Plaintiff's damages are limited by N.J.S.A. 59:9-5.
34. Plaintiff's damages are limited by N.J.S.A. 59:9-7.
35. Defendant pleads the defense of probable cause.
36. Defendant pleads the defense of good faith.
37. Defendant pleads the defense of municipal immunity.
38. Defendant pleads the defense of proper force.
39. Defendant pleads the defense of self-defense.
40. Defendant pleads the defense of justification.
41. Defendant pleads the defense of absolute immunity.
42. Defendant pleads the defense of proper arrest.
43. Defendant pleads all those defenses that would be permissible to Defendant in accordance with Common Law.
44. Defendant pleads all those statutory defenses permissible in accordance with New Jersey Criminal Code.
45. The claims of the Plaintiff lacks merit and are frivolous in nature. Defendant hereby reserves the right to institute a subsequent claim for abuse of process and of the institution of a frivolous lawsuit, subject to the dismissal of the instant claim of the Plaintiff.
46. The Defendant pleads the doctrine of collateral estoppel.

47. Any injuries incurred by the Plaintiff were due to his own involuntary actions.

48. Defendant's actions were not intentional or willful misconduct.

49. Defendant pleads the defense of qualified immunity.

50. Defendant hereby reserves the right to add additional separate defenses based upon pre-trial discovery and trial testimony.

51. Plaintiff's Complaint fails to state a cause for action against the Defendant named herein, fails to state with any specificity the allegations against this Defendant and fails to allege a basis for relief.

52. This particular Defendant was not guilty of any conduct which could be held to violate 42 U.S.C. 1983 or which was a proximate or producing cause of any injury or damage alleged in the Complaint.

53. This Defendant pleads the defense of the statute of limitations.

**JURY DEMAND**

This particular Defendant demand a trial by jury consisting of twelve (12) members on all issues.

**DEMAND FOR STATEMENT OF DAMAGES**

The Defendant demand that the Plaintiff serve upon it a statement of damages itemizing each item of damages and providing the means of calculation for each.

**CERTIFICATION**

I hereby certify that the matter in controversy in the within Complaint is not the subject of any other action pending in any Court of any pending arbitration proceeding nor in any such proceeding contemplated at this time by the Defendant.

I further certify that to the best of my knowledge and belief there are no other parties who should be joined to this action.

JOHN MORELLI, P.C.

By: s/ John Morelli (MORE8109)  
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Dated: June 25, 2009

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